

REFERENCE TITLE: employer sanctions; judicial findings

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
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## HB 2344

Introduced by  
Representatives Konopnicki, Pancrazi, Ulmer, Senators Aguirre: Arzberger,  
Flake

AN ACT

AMENDING SECTIONS 23-211 AND 23-212, ARIZONA REVISED STATUTES; RELATING TO  
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 23-211, Arizona Revised Statutes, is amended to  
3 read:  
4 23-211. Definitions  
5 In this article, unless the context otherwise requires:  
6 1. "Agency" means any agency, department, board or commission of this  
7 state or a county, city or town that issues a license for purposes of  
8 operating a business in this state.  
9 2. "Basic pilot program" means the basic employment verification pilot  
10 program as jointly administered by the United States department of homeland  
11 security and the social security administration or its successor program.  
12 3. "Employee" means any person who performs employment services for an  
13 employer pursuant to an employment relationship between the employee and  
14 employer.  
15 4. "Employer" means any individual or type of organization that  
16 transacts business in this state, that has a license issued by an agency in  
17 this state and that employs one or more individuals who perform employment  
18 services in this state. Employer includes this state, any political  
19 subdivision of this state and self-employed persons.  
20 5. "Intentionally" has the same meaning prescribed in section 13-105.  
21 6. "Knowingly employ an unauthorized alien" means ~~the actions~~  
22 ~~described in 8 United States Code section 1324a. This term shall be~~  
23 ~~interpreted consistently with 8 United States Code section 1324a and any~~  
24 ~~applicable federal rules and regulations~~ TO HIRE, EMPLOY OR RECRUIT A PERSON  
25 AND HAVE ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THE PERSON IS AN UNAUTHORIZED  
26 ALIEN.  
27 7. "License":  
28 (a) Means any agency permit, certificate, approval, registration,  
29 charter or similar form of authorization that is required by law and that is  
30 issued by any agency for the purposes of operating a business in this state.  
31 ~~(b) Includes:~~  
32 ~~(i) Articles of incorporation under title 10.~~  
33 ~~(ii) A certificate of partnership, a partnership registration or~~  
34 ~~articles of organization under title 29.~~  
35 ~~(iii) A grant of authority issued under title 10, chapter 15.~~  
36 ~~(iv) Any transaction privilege tax license.~~  
37 ~~(e)~~ (b) Does not include:  
38 (i) Any license issued pursuant to title 45 or 49 or rules adopted  
39 pursuant to those titles.  
40 (ii) Any professional license.  
41 8. "PATTERN OR PRACTICE":  
42 (a) MEANS REGULAR, REPEATED AND INTENTIONAL ACTIONS.  
43 (b) DOES NOT INCLUDE ISOLATED, SPORADIC OR ACCIDENTAL ACTS OR MULTIPLE  
44 VIOLATIONS OF THIS ARTICLE RESULTING FROM A SINGLE ACTION.

1           ~~8.~~ 9. "Unauthorized alien" means an alien who does not have the legal  
2 right or authorization under federal law to work in the United States as  
3 described in 8 United States Code section 1324a(h)(3).

4           Sec. 2. Section 23-212, Arizona Revised Statutes, is amended to read:

5           23-212. Employment of unauthorized aliens; prohibition; false  
6                                   and frivolous complaints; violation; classification;  
7                                   license suspension and revocation; affirmative  
8                                   defense

9           A. An employer shall not intentionally employ an unauthorized alien or  
10 knowingly employ an unauthorized alien.

11           B. On receipt of a complaint that an employer allegedly intentionally  
12 employs an unauthorized alien or knowingly employs an unauthorized alien, the  
13 attorney general or county attorney shall investigate whether the employer  
14 has violated subsection A. When investigating a complaint, the attorney  
15 general or county attorney shall verify the work authorization of the alleged  
16 unauthorized alien with the federal government pursuant to 8 United States  
17 Code section 1373(c). A state, county or local official shall not attempt to  
18 independently make a final determination on whether an alien is authorized to  
19 work in the United States. An alien's immigration status or work  
20 authorization status shall be verified with the federal government pursuant  
21 to 8 United States Code section 1373(c). A person who knowingly files a  
22 false and frivolous complaint under this subsection is guilty of a class 3  
23 misdemeanor.

24           C. If, after an investigation, the attorney general or county attorney  
25 determines that the complaint is not frivolous:

26           1. The attorney general or county attorney shall notify the United  
27 States immigration and customs enforcement of the unauthorized alien.

28           2. The attorney general or county attorney shall notify the local law  
29 enforcement agency of the unauthorized alien.

30           3. The attorney general shall notify the appropriate county attorney  
31 to bring an action pursuant to subsection D if the complaint was originally  
32 filed with the attorney general.

33           D. An action for a violation of subsection A shall be brought against  
34 the employer by the county attorney in the county where the unauthorized  
35 alien employee is employed. **THE COUNTY ATTORNEY SHALL ESTABLISH BEYOND A**  
36 **REASONABLE DOUBT THAT AN EMPLOYER HAS INTENTIONALLY EMPLOYED AN UNAUTHORIZED**  
37 **ALIEN OR KNOWINGLY EMPLOYED AN UNAUTHORIZED ALIEN.** The county attorney shall  
38 not bring an action against any employer for any violation of subsection A  
39 that occurs before January 1, 2008. A second violation of this section shall  
40 be based only on an unauthorized alien who is employed by the employer after  
41 ~~an action~~ **A JUDICIAL FINDING OF A VIOLATION** has been ~~brought~~ **ISSUED** for a  
42 violation of subsection A.

43           E. For any action in superior court under this section, the court  
44 shall expedite the action, including assigning the hearing at the earliest  
45 practicable date.

1 F. On a finding of a violation of subsection A:

2 1. For a first violation during a three year period that is a knowing  
3 violation of subsection A, the court:

4 (a) Shall order the employer to terminate the employment of all  
5 unauthorized aliens.

6 (b) Shall order the employer to be subject to a three year  
7 probationary period. During the probationary period the employer shall file  
8 quarterly reports with the county attorney of each new employee who is hired  
9 by the employer at the specific location where the unauthorized alien  
10 performed work.

11 (c) Shall order the employer to file a signed sworn affidavit with the  
12 county attorney within three business days after the order is issued. The  
13 affidavit shall state that the employer has terminated the employment of all  
14 unauthorized aliens and that the employer will not intentionally or knowingly  
15 employ an unauthorized alien. The court shall order the appropriate agencies  
16 to suspend all licenses subject to this subdivision that are held by the  
17 employer if the employer fails to file a signed sworn affidavit with the  
18 county attorney within three business days after the order is issued. All  
19 licenses that are suspended under this subdivision shall remain suspended  
20 until the employer files a signed sworn affidavit with the county attorney.  
21 Notwithstanding any other law, on filing of the affidavit the suspended  
22 licenses shall be reinstated immediately by the appropriate agencies. For  
23 the purposes of this subdivision, the licenses that are subject to suspension  
24 under this subdivision are all licenses that are held by the employer and  
25 that are necessary to operate the employer's business at the employer's  
26 business location where the unauthorized alien performed work. If a license  
27 is not necessary to operate the employer's business at the specific location  
28 where the unauthorized alien performed work, but a license is necessary to  
29 operate the employer's business in general, the licenses that are subject to  
30 suspension under this subdivision are all licenses that are held by the  
31 employer at the employer's primary place of business **IF THERE IS A PATTERN OR**  
32 **PRACTICE OF EMPLOYING UNAUTHORIZED ALIENS**. On receipt of the court's order  
33 and notwithstanding any other law, the appropriate agencies shall suspend the  
34 licenses according to the court's order. The court shall send a copy of the  
35 court's order to the attorney general and the attorney general shall maintain  
36 the copy pursuant to subsection G.

37 (d) May order the appropriate agencies to suspend all licenses  
38 described in subdivision (c) of this paragraph that are held by the employer  
39 for not to exceed ten business days. The court shall base its decision to  
40 suspend under this subdivision on any evidence or information submitted to it  
41 during the action for a violation of this subsection and shall consider the  
42 following factors, if relevant:

43 (i) The number of unauthorized aliens employed by the employer.

44 (ii) Any prior misconduct by the employer.

45 (iii) The degree of harm resulting from the violation.

1 (iv) Whether the employer made good faith efforts to comply with any  
2 applicable requirements.

3 (v) The duration of the violation.

4 (vi) The role of the directors, officers or principals of the employer  
5 in the violation.

6 (vii) Any other factors the court deems appropriate.

7 2. For a first violation during a five year period that is an  
8 intentional violation of subsection A, the court shall:

9 (a) Order the employer to terminate the employment of all unauthorized  
10 aliens.

11 (b) Order the employer to be subject to a five year probationary  
12 period. During the probationary period the employer shall file quarterly  
13 reports with the county attorney of each new employee who is hired by the  
14 employer at the specific location where the unauthorized alien performed  
15 work.

16 (c) Order the appropriate agencies to suspend all licenses, ~~as~~ described  
17 in subdivision (d) of this paragraph that are held by the employer for a  
18 minimum of ten days. The court shall base its decision on the length of the  
19 suspension under this subdivision on any evidence or information submitted to  
20 it during the action for a violation of this subsection and shall consider  
21 the following factors, if relevant:

22 (i) The number of unauthorized aliens employed by the employer.

23 (ii) Any prior misconduct by the employer.

24 (iii) The degree of harm resulting from the violation.

25 (iv) Whether the employer made good faith efforts to comply with any  
26 applicable requirements.

27 (v) The duration of the violation.

28 (vi) The role of the directors, officers or principals of the employer  
29 in the violation.

30 (vii) Any other factors the court deems appropriate.

31 (d) Order the employer to file a signed sworn affidavit with the  
32 county attorney. The affidavit shall state that the employer has terminated  
33 the employment of all unauthorized aliens and that the employer will not  
34 intentionally or knowingly employ an unauthorized alien. All licenses that  
35 are suspended under this subdivision shall remain suspended until the  
36 employer files a signed sworn affidavit with the county attorney. For the  
37 purposes of this subdivision, the licenses that are subject to suspension  
38 under this subdivision are all licenses that are held by the employer and  
39 that are necessary to operate the employer's business at the employer's  
40 business location where the unauthorized alien performed work. If a license  
41 is not necessary to operate the employer's business at the specific location  
42 where the unauthorized alien performed work, but a license is necessary to  
43 operate the employer's business in general, the licenses that are subject to  
44 suspension under this subdivision are all licenses that are held by the  
45 employer at the employer's primary place of business **IF THERE IS A PATTERN OR**

1 PRACTICE OF EMPLOYING UNAUTHORIZED ALIENS. On receipt of the court's order  
2 and notwithstanding any other law, the appropriate agencies shall suspend the  
3 licenses according to the court's order. The court shall send a copy of the  
4 court's order to the attorney general and the attorney general shall maintain  
5 the copy pursuant to subsection G.

6 3. For a second violation of subsection A during the period of  
7 probation, the court ~~shall~~ MAY:

8 (a) BASE ITS DECISION TO REVOKE ANY LICENSE DESCRIBED IN SUBDIVISION  
9 (b) OF THIS PARAGRAPH ON ANY EVIDENCE OR INFORMATION SUBMITTED TO IT DURING  
10 THE ACTION FOR A VIOLATION OF THIS SUBSECTION AND SHALL CONSIDER THE  
11 FOLLOWING FACTORS, IF RELEVANT:

12 (i) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE EMPLOYER.

13 (ii) ANY PRIOR MISCONDUCT BY THE EMPLOYER.

14 (iii) THE DEGREE OF HARM RESULTING FROM THE VIOLATION.

15 (iv) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO COMPLY WITH ANY  
16 APPLICABLE REQUIREMENTS.

17 (v) THE DURATION OF THE VIOLATION.

18 (vi) THE ROLE OF THE DIRECTORS, OFFICERS OR PRINCIPALS OF THE EMPLOYER  
19 IN THE VIOLATION.

20 (vii) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

21 (b) Order the appropriate agencies to permanently revoke all licenses  
22 that are held by the employer and that are necessary to operate the  
23 employer's business at the employer's business location where the  
24 unauthorized alien performed work. If a license is not necessary to operate  
25 the employer's business at the specific location where the unauthorized alien  
26 performed work, but a license is necessary to operate the employer's business  
27 in general, the court shall order the appropriate agencies to permanently  
28 revoke all licenses that are held by the employer at the employer's primary  
29 place of business IF THERE IS A PATTERN OR PRACTICE OF EMPLOYING UNAUTHORIZED  
30 ALIENS. On receipt of the order and notwithstanding any other law, the  
31 appropriate agencies shall immediately revoke the licenses.

32 G. The attorney general shall maintain copies of court orders that are  
33 received pursuant to subsection F and shall maintain a database of the  
34 employers who have a first violation of subsection A and make the court  
35 orders available on the attorney general's website.

36 H. On determining whether an employee is an unauthorized alien, the  
37 court shall consider only the federal government's determination pursuant to  
38 8 United States Code section 1373(c). The federal government's determination  
39 creates a rebuttable presumption of the employee's lawful status. The court  
40 may take judicial notice of the federal government's determination and may  
41 request the federal government to provide automated or testimonial  
42 verification pursuant to 8 United States Code section 1373(c).

43 I. For the purposes of this section, proof of verifying the employment  
44 authorization of an employee through the basic pilot program creates a

1 rebuttable presumption that an employer did not intentionally employ an  
2 unauthorized alien or knowingly employ an unauthorized alien.

3 J. For the purposes of this section, an employer who establishes that  
4 it has complied in good faith with the requirements of 8 United States Code  
5 section ~~1324b~~ 1324a(b) establishes an affirmative defense that the employer  
6 did not intentionally or knowingly employ an unauthorized alien.